

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

AVEOS FLEET PERFORMANCE INC.,

Plaintiff,

-against-

No. 11 Civ. 8:11-CV-0950
(GTS/DRH)

VISION AIRLINES, INC.,

Defendant,

AFFIDAVIT OF JOHN MAGGIO

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN MAGGIO, being first duly sworn, deposes and says:

1. I am admitted to practice in the United States District Court for the Northern District of New York and am a partner at the law firm of Condon & Forsyth LLP, co-counsel for Plaintiff Aveos Fleet Performance Inc. (“Aveos”).

2. I have participated in this action and am familiar with all pleadings and proceedings had herein.

3. I submit this affidavit in support of Plaintiff’s motion for voluntary dismissal of the action, pursuant to Federal Rule of Civil Procedure 41(a)(2).

4. This is a breach of contract action in which Aveos seeks payment for work performed pursuant to an Engine Technical Services Agreement for defendant VISION AIRLINES, INC. (“Vision”), i.e., the nonpayment of invoices totaling \$3,872,633.67 plus interest.

5. Pursuant to this Court's order dated July 3, 2013, [DE 48], and Local Rule 83.11, the parties arranged for and entered mediation to settle all claims in this case. The agreed mediator selected was Daniel Hurteau, Esq. of Nixon Peabody in Albany, New York. *See* DE 49.

6. The mediation was attended by Mr. Brian Foont, co-counsel for Aveos and authorized representative for settlement purposes, and Mike Smith, a corporate officer of Vision. Both Mr. Foont and Mr. Smith represented that they had unfettered authority to settle the case, in accordance with Local Rule 83.11-5(b).

7. After approximately six uninterrupted hours of mediation negotiations, the parties reached a settlement agreement. The terms of this agreement were memorialized in a written settlement, including a merger clause, and were duly signed and executed by Mr. Foont and Mr. Smith as representatives of the parties. Attach as Exhibit A hereto is a copy of the Settlement Agreement.

8. On November 14, 2013, Mr. Hurteau filed a report indicating his understanding that the parties had in fact settled the case at the October 21 mediation. *See* DE 51

9. On November 13, 2013, the Court issued a text Order instructing the parties to submit a status report with regard to the mediation and potential settlement of the case by November 20. *See* DE 50.

10. On November 20, 2013, I filed a status report confirming that the case had been settled and requested that the Court dismiss the action but retain jurisdiction to enforce the settlement agreement. *See* DE 53.

11. Also, on November 20, 2013, counsel for Vision submitted a status report stating the settlement agreement was “imperfectly” executed suggesting that it may be unenforceable. *See* DE 52.

12. I have spoken with Vision’s counsel since the filing of the November 20 status reports and he has advised that the authorized representatives signed the settlement agreement on the wrong signature blocks, which is what he meant by “imperfect” in its execution.

13. Such an error is not material to the settlement agreement and Aveos maintains that the agreement is binding on both parties and that all claims in this case are therefore resolved.

/s/ John Maggio

John Maggio

Sworn to before me this
9th day of December, 2013

Notary Public

CERTIFICATE OF SERVICE

I hereby certify pursuant to Local Rule 7.1(a), that a true and correct copy of the foregoing was served on December 9, 2012, on all counsel or parties of record on the Service List and by the means as listed below.

/s/ John Maggio

John Maggio, Esq.

SERVICE LIST

VIA ECF
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